IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

RANDY ARNETTE,

Respondent.

CASE NO.: 76,689

RESPONDENT'S BRIEF ON THE MERITS

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RESPONDENT'S BRIEF ON THE MERITS

STATEMENT OF THE CASE AND FACTS

Respondent accepts the statement of the case and facts set forth in Petitioner's brief with the following additions:

The conduct which formed the basis for the violation and revocation of Respondent's community control occurred in 1984. However, the actual finding of violation and revocation of community control occurred on March 6, 1986. (R 75-84) Respondent was sentenced to life in prison for the burglary conviction and a concurrent five year prison term of the false imprisonment conviction. (R 158-160)

On September 20, 1990, the Fifth District Court of Appeal reversed the sentences and held that the maximum sentence under the youthful offender statute which Respondent could receive upon revocation of community control was four years in prison. In so ruling, the Court certified the following question to be one of great public importance:

> IN ANSWERING THE SECOND CERTIFIED QUESTION IN BROOKS V. STATE, 478 SO.2D 1052 (FLA. 1985), DID THE SUPREME COURT HOLD THAT PRIOR TO THE

1985 AMENDMENT TO THE YOUTHFUL OFFENDER ACT (CHAPTER 958) EVEN THOUGH A YOUTHFUL OFFENDER HAD PREVIOUSLY BEEN ADJUDICATED A YOUTHFUL OFFENDER AND SENTENCED AS SUCH TO A PROBATIONARY SPLIT SENTENCE AND THEREAFTER VIOLATED PROBATION HE MAY BE "RESENTENCED" TO CONFINEMENT FOR THE MAXIMUM STATUTORY PERIOD FOR THE OFFENSE INVOLVED WITHOUT LIMITATION TO THE FOUR YEAR PROVISION OF THE YOUTHFUL OFFENDER ACT (SECTION 958.04(2)(c) AND (d), FLORIDA STATUTES), CONTRARY TO THE HOLDINGS IN BROWN V. STATE, 492 SO.2D 822 (Fla. 2d DCA 1986): TIMOTHY CROSBY V. STATE, 470 SO.2D. 1034 (Fla. 1st DCA 1985); LANE V. STATE, 470 SO.2D 30 (Fla. 5th DCA 1985); HART V. STATE, 463 SO.2d 491 (Fla. 2d DCA 1985); CLEM V. STATE, 462 SO.2D 1134 (Fla. 4th DCA 1984); JAMES CROSBY (II) V. STATE, 462 SO.2D 607 (Fla. 2d DCA 1985); ELLIS V. STATE, 436 SO.2D 342 (Fla. 1st DCA 1983), rev. denied, 443 SO.2D 980 (Fla. 1984); BRANDLE V. STATE, 406 SO.2D 1221 (Fla. 4th DCA 1981); GREEN V. STATE, 398 SO.2D 1011 (Fla. 1st DCA 1981), appeal dis'm., 406 SO.2D 1118 (Fla. 1981).

Arnette v. State, 15 FLW D 2369 (Fla. 5th DCA September 20, 1990).

SUMMARY OF ARGUMENT

A youthful offender who is resentenced following revocation of community control is subject to the limitation of sentences provided in the youthful offender act. Brooks v. State, 478 So.2d 1052 (Fla. 1985) did not hold that following revocation of a youthful offender community control a trial court was permitted to sentence the youthful offender to the maximum provided by law. Any confusion in this regard was clarified by the legislature by its 1985 amendment to Section 958.14, Florida Statutes (1985) which limited sentence following revocation of youthful offender community control to six years. Even if this legislative amendment was intended to change the law, the amendment is applicable to Respondent who was resentenced after the effective date.

ARGUMENT

UPON REVOCATION OF COMMUNITY CONTROL IMPOSED PURSUANT TO THE YOUTHFUL OFFENDER ACT, A TRIAL COURT IS LIMITED TO SENTENCING THE DEFENDANT TO THE MAXIMUM ALLOWED UNDER THE PROVISIONS OF THE YOUTHFUL OFFENDER ACT.

As Petitioner notes, the District Court of Appeal below expressed confusion regarding this Court's affirmative answer to the second certified question in Brooks v. State, 478 So.2d 1052 (Fla. 1985) which asked:

> ...may the circuit court, upon revocation of a youthful offender's community control program status, treat the defendant as though it has never placed him in community control and sentence him in accordance with section 948.06(1), Florida Statutes?

Unfortunately, although this Court answered the question in the affirmative, it did so without discussion and addressed only the question regarding the circuit court's jurisdiction to handle the violation of community control. It is important to note that in Brooks, the defendant was adjudicated guilty of two counts of armed robbery and was sentenced as a youthful offender on each. After serving the incarcerative portion of the sentence, Brooks was released on community control and subsequently violated it. Upon revocation, Brooks was sentenced to two years in prison on each charged. Therefore, the sentence imposed did not exceed the maximum permitted under the youthful offender act.

In approving the decision in Brooks, this Court also approved the decisions in Clem v. State, 462 So.2d 1134 (Fla. 4th DCA 1984) and Spurlock v. State, 449 So.2d 973 (Fla. 5th DCA

1985), review denied 466 So.2d 212 (Fla. 1985). It is both necessary and instructive to examine the holdings of these cases which were expressly approved by this Court in Brooks.

In Clem, supra, the defendant was convicted of robbery with a weapon and sentenced as a youthful offender to two years in prison followed by two years probation. Later, Clem was found to have violated his probation and was sentenced to sixty years in prison. On appeal, the Fourth District Court of Appeal reversed the sentence and held that in sentencing a defendant who had been previously declared to be a youthful offender, the court is limited to a maximum sentence of four years in prison. In so ruling, the court specifically rejected the state's contention that upon revocation, the trial court could impose whatever sentence it might originally have imposed without regard to the youthful offender act.

In Spurlock, supra, the Fifth District Court of Appeal affirmed a revocation of probation imposed pursuant to the youthful offender act. However, the Court strongly suggested that the five year sentence could be challenged as being in excess of the maximum permitted under the youthful offender act.

Both the Spurlock and Clem courts relied specifically on Ellis v. State, 436 So.2d 342 (Fla. 1st. DCA 1983) review denied 443 So.2d 980 (Fla. 1984). In Ellis, the defendant was classified as a youthful offender in 1979 for a conviction for attempted sexual battery and sentenced to one year in prison followed by five years probation. Ellis violated his probation which was revoked. The trial court sentenced Ellis to six years

in prison, rejecting defense counsel's argument that the maximum sentence permitted under the youthful offender act was four years in prison followed by two years on community control. On appeal, the First District Court of Appeal reversed and held that once a defendant is classified as a youthful offender he must be sentenced in accordance with the provisions of the youthful offender act even when being sentenced pursuant to a subsequent revocation of probation. Therefore, the court ordered that Ellis could be sentenced to no more than four years in prison.

In Brooks, supra, as noted above, this Court specifically approved Clem and Spurlock and sub silentio Ellis. Therefore, the case sub judice was correctly decided and the answer to the certified question must be a resounding no! As Petitioner correctly notes, all of the cases cited by the Fifth District Court of Appeal in the certified question support the proposition that the maximum sentence following revocation of youthful offender community control is four years in prison and compel a negative answer to the certified question herein.

Effective July 1, 1985, the legislature amended Section 958.14, Florida Statutes (1985) to specifically provide that even after violation of probation or community control, no youthful offender could be imprisoned for a period longer than six years or the statutory maximum whichever is less. Respondent asserts that this amendment was intended to clarify the legislature's original intent which had been misconstrued by several decisions. Judge Thompson, in a well-reasoned opinion in Watson v. State, 528 So.2d 101 (Fla. 1st DCA 1988) suggested this very

interpretation. Notwithstanding whether the amendment changed the law or merely clarified the law, Respondent is still entitled to relief. In Watson, supra, the Court held that the amendment is applicable to any youthful offender resentenced after the effective date. This Court approved the holding in Watson in State v. Watts, 558 So.2d 994 (Fla. 1990). In the instant case, Respondent's community control was revoked and he was resentenced on March 6, 1986, more than eight months after the amendment took effect. Additionally even if pre-amendment the court was authorized to impose punishment after revocation up to the statutory maximum even if it exceeds six years, the 1985 amendment restricting punishment to six years constitutes a limitation on a previously authorized punishment. As such, the amendment can be constitutionally applied retroactively to Respondent as the Court below properly ruled. See generally, Weaver v. Graham, 450 U.S. 24, 101 S.Ct. 960, 67 L.Ed.2d 17 (1981). [to violate constitutional proscription against ex post facto, the law must be retrospective and disadvantage the offender].

Finally, Respondent argues that even if this Court answers the certified question in the affirmative, the sentence must still be vacated. Respondent elected sentencing under the guidelines which called for a sentence of three years. (R 76-77) Since sentencing followed revocation of community control, the trial court was limited to the one-cell bump-up, Lambert v. State, 545 So.2d 838 (Fla. 1989).

CONCLUSION

Based on the foregoing reasons and authorities, Respondent respectfully requests this Honorable Court to answer the certified question in the negative and approve the decision of the Fifth District Court of Appeal sub judice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, 210 N. Palmetto Ave, Suite 447, Daytona Beach, FL 32114 in his basket at the Fifth District Court of Appeal and mailed to: Randy Arnette, No. 072704, P.O. Box 500, Olustee, FL 32072, this 13th day of November, 1990.

Michael S Becker
MICHAEL S. BECKER
ASSISTANT PUBLIC DEFENDER

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, Petitioner, vs. STATE OF FLORIDA, Respondent.	)	CASE NO.: 76,689

A P P E N D I X

Arnette v. State,
15 FLW D2369 (Fla. 5th DCA September 20, 1990)

the judgment and the sentence, and the delay in sentencing was not unreasonable, there exists no reason for the trial court to lose jurisdiction to sentence the defendant while the adjudication of guilt is on appeal.

We find no merit in the remaining issues raised on appeal.

AFFIRMED. (HARRIS, J., and McNEAL, R.T., Associate Judge, concur.)

* * *

Criminal law—Search and seizure—Alert of narcotics dog on defendant's luggage at Houston airport provided sufficient probable cause for Orlando officers to search luggage where officer in Houston, although unknown to Orlando officer, provided such specific and detailed information that Orlando officer could reasonably conclude that source of information about defendant's luggage was a fellow law enforcement officer whose information was truthful and reliable—Fact that Orlando narcotics dog did not alert on luggage did not negate probable cause flowing from Houston dog's alert where it was improbable that anyone had access to suitcase between time it left police surveillance in Houston and came under surveillance of officers in Orlando—Error to grant motion to suppress marijuana found in luggage

STATE OF FLORIDA, Appellant, v. JOHN M. SILUK, Appellee. 5th District. Case No. 89-1484. Opinion filed September 20, 1990. Appeal from the Circuit Court for Orange County, Richard F. Conrad, Judge. Robert A. Butterworth, Attorney General, Tallahassee, James W. Rogers, Assistant Attorney General, and David Sutton, Certified Legal Intern, Tallahassee, for Appellant. No appearance for Appellee.

(GRIFFIN, J.) The State appeals the trial court's order granting a Motion to Suppress. We reverse.

On January 31, 1987, defendant checked two bags prior to departure from Houston, Texas to Orlando, Florida via Transtar Airlines. During a routine investigation of checked luggage, a dog trained to detect the presence of narcotics "alerted" to the luggage. The Houston police officer who supervised the dog reported the alert to an officer in Houston's Narcotics Division, Roy Slay. Because the Houston police did not know who had checked the luggage, Slay decided to have his men allow the luggage on the flight. He then contacted James Aaron, a member of Orlando's Metropolitan Bureau of Investigation, specifically identifying the luggage and giving detailed information about the qualifications of the narcotics dog.[1]

Officer Aaron made arrangements to meet the Transtar flight in Orlando, and asked Orange County's Canine Unit to respond to the call. When a number of bags from the Transtar flight, including defendant's luggage, were placed before the Orange County dog, the dog failed to alert to the presence of any drugs.

Officer Aaron then proceeded to baggage claim to wait for the luggage. After defendant collected the bags, he was stopped by Aaron and asked for permission to search the bags. When defendant refused permission to search one of the bags, Aaron seized the suitcase and obtained a search warrant for it. The bag was found to contain 1784 grams of marijuana.

After his arrest, defendant filed a Motion to Suppress on the ground that the Orlando police had no probable cause "to stop the Defendant or seize his luggage or to obtain a search warrant of [Defendant's] suitcase." At the suppression hearing, the defendant argued that the probable cause that existed in Houston was vitiated by the failure of the Orlando police dog to alert to defendant's luggage.[2] The defendant also argued that the information provided by Officer Slay was no more than double hearsay from an unknown informant. An order was entered suppressing the contents of the luggage.

It is well established that an "alert" by a properly trained police dog will provide probable cause for a subsequent search. *See Crosby v. State*, 492 So.2d 1152, 1153 (Fla. 3d DCA 1986); *Vetter v. State*, 395 So.2d 1199, 1200 (Fla. 3d DCA 1981). We do not accept the argument that the failure of the local narcotics dog to "alert" to the luggage neutralized the probable cause flowing from the alert in Houston, where, as here, it was improbable that anyone had access to the suitcase between the time it left police surveillance in Houston and came under surveillance in Orlando. Moreover, although the officer in Houston was not known to the officer in Orlando, he provided such specific and detailed information that the Orlando officer was reasonable in his conclusion that the source of information about the defendant's luggage was a fellow law enforcement officer whose information was truthful and reliable. *See State v. Beney*, 523 So.2d 744, 746 (Fla. 5th DCA 1988). *See also United States v. Asselin*, 775 F.2d 445 (1st Cir. 1985).

REVERSED. (SHARP, W. and GOSHORN, JJ., concur.)

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[1]The dog, "Ace", was 5 years old, had been working in the field for the previous 4 years, and had been successful in over 100 narcotics seizures. Mr. Slay also stated that "Ace" had a success rating of approximately 93%, had received training at the United States Customs Narcotics Training Center for dogs, and had been recertified annually since his initial training.

[2]The defense acknowledged that "if [the search] had happened in Houston, quite honestly, there's no question they could have searched because they got a reaction from the dogs out there."

* * *

Criminal law—Sentencing—Youthful offender—Revocation of community control or probation imposed under split sentence—Prior to 1985 amendment of Youthful Offender Act, upon violation of probation, a youthful offender was subject to four-year limitation on resentencing—Sentence of life imprisonment and five years incarceration in instant case was illegal—Question certified as to whether supreme court in *Brooks v. State* has held that, prior to the 1985 amendment to the Youthful Offender Act, even though a defendant had previously been adjudicated a youthful offender and sentenced as such to a probationary split sentence and thereafter violated probation, defendant could be "resentenced" to confinement for the maximum statutory period for the offense involved without limitation to the four year provision of the Youthful Offender Act, contrary to holdings in certain other cases

RANDY ARNETTE, Appellant, v. STATE OF FLORIDA, Appellee. 5th District. Case No. 89-1037. Opinion filed September 20, 1990. Appeal from the Circuit Court for Citrus County, William F. Edwards, Judge. James B. Gibson, Public Defender, and Michael S. Becker, Assistant Public Defender, Daytona Beach, for Appellant. Robert A. Butterworth, Attorney General, Tallahassee, and Barbara C. Davis, Assistant Attorney General, Daytona Beach, for Appellee.

(COWART, J.) This case involves the questions of (1) whether a defendant sentenced as a youthful offender can, after revocation of community control under a split sentence, be sentenced to more than six years with credit for time previously served and (2) whether the statutory amendment limiting sentencing of the youthful offender upon violation of community control to six years[1] is applicable in a case where both the initial offense and the subsequent event violating community control occurred prior to the effective date of the amendment but the violation of community control was not adjudicated, the community control was not terminated, and the defendant was not resentenced on the initial offense until after the effective date of the amendment.[2]

On May 15, 1981, the defendant was adjudicated to be a youthful offender and as to an armed burglary offense was sentenced to a probationary split sentence of four years incarceration followed by two years on probation and as to a false imprison-

ment offense he was sentenced to a concurrent three years incarceration. After serving the incarcerative portion of the probationary split sentence on the armed burglary charge and while on probation for that offense, the defendant was convicted of another substantive offense, his probation was revoked and he was sentenced on two scoresheets; that sentence was appealed and vacated[3] and on remand he was "resentenced" to five years on the false imprisonment offense and to life imprisonment on the armed burglary offense and he appeals those sentences.

Prior to a 1985 amendment (Chapter 85-288, section 20, Laws of Florida), section 958.05(2) (now 958.04(2)) of the Youthful Offender Act provided that after a court classified a person as a youthful offender the court could commit the youthful offender to imprisonment for a period not to exceed six years but required the court to specify a period of not more than the first four years to be served by imprisonment and a period of not more than two years to be served in a community control program. This provision is somewhat ambiguous but seems to (1) limit the period that a youthful offender could be committed to imprisonment to either six years or four years and (2) mandates some type of sentence split with no more than four years imprisonment and two years in a community control program.

Section 958.14 of the Youthful Offender Act provided that upon a violation of community control the youthful offender will be subject "to the provisions of section 948.06(1)." Section 948.06(1), Florida Statutes, was part of the original statute adopting the concept of probation in Florida and provides in effect that when a person is not sentenced but is placed on straight probation in lieu of sentence (this is not any type of a split sentence) and that probation is terminated for a violation, the trial judge could "impose any sentence which it might have originally imposed before placing" the offender on probation or into community control. This in effect meant that the only limitation on a sentence following a revocation of *straight* probation was the maximum sentence provided by statute for the particular offense.

Thus the Youthful Offender Act incorporated several patent ambiguities when a youthful offender who was placed on probation or community control under the Youthful Offender Act violated community control and the statutory maximum punishment for the original offense was in excess of the limitation contained in the Youthful Offender Act. The first ambiguity is whether the youthful offender's confinement was subject to an outside limitation of four years or six years. The second ambiguity is whether the incarceration limitation (be it four years or six years) applied when the youthful offender was being resentenced after a violation of straight probation or community control or whether the reference in section 958.14 to section 948.06(1) served to permit the imposition of the maximum statutory punishment for the particular underlying offense without the Youthful Offender Act's four or six year limitation. A third ambiguity is whether the answer to the preceding question is different when the original Youthful Offender sentence is a split sentence rather than straight probation imposed in lieu of sentence. Another ambiguity is whether the answers to the preceding questions differ when the original Youthful Offender sentence is a true split sentence rather than a probationary split sentence.[4]

Several district courts of appeal addressed the first two of these enumerated ambiguities and unanimously held that section 958.05(2) of the Youthful Offender Act (now section 958.04(2)) limited incarceration to a four year maximum period and that limitation applied to sentencing after a revocation of probation. *See Brown v. State*, 492 So.2d 822 (Fla. 2d DCA 1986); *Timothy Crosby v. State*, 475 So.2d 1034 (Fla. 1st DCA 1985); *Lane v. State*, 470 So.2d 30 (Fla. 5th DCA 1985); *Hart v. State*, 463 So.2d 491 (Fla. 2d DCA 1985); *Clem v. State*, 462 So.2d 1134 (Fla. 4th DCA 1984); *James Crosby (II) v. State*, 462 So.2d 607 (Fla. 2d DCA 1985); *Ellis v. State*, 436 So.2d 342 (Fla. 1st DCA 1983), *rev. denied*, 443 So.2d 980 (Fla. 1984); *Brandle v. State*, 406 So.2d 1221 (Fla. 4th DCA 1981); *Greene v. State*, 398 So.2d 1011 (Fla. 1st DCA 1981), *appeal dism.*, 406 So.2d 1118 (Fla. 1981). These cases made no distinction between cases originally involving straight probation (or community control) and cases in which, originally, a true or probationary split sentence was imposed.

At this point the seeds of another ambiguity were planted. While *Clem* followed *Ellis* in holding that a youthful offender's sentence was limited to four years after violation of probation, the *Clem* court certified two questions, the second asking whether, upon revocation of a youthful offender's community control, can he be sentenced in accordance with section 948.06(1). This question did not clearly frame the alternatives presented which were whether after revocation of supervision a youthful offender's sentence was restricted to four years under the youthful offender statute, or whether the reference to section 948.06(1) authorized a sentence up to the statutory maximum even when the statutory maximum exceeded the four year limitation in the youthful offender statute. *Brooks v. State*, 461 So.2d 995 (Fla. 1st DCA 1984) followed *Clem* and adopted the same certified questions which were considered by the supreme court in *Brooks v. State*, 478 So.2d 1052 (Fla. 1985).

In *Brooks*, 478 So.2d at 1052, the supreme court focused its attention entirely on the first question certified (which involved jurisdiction of the circuit court versus jurisdiction of the parole and probation commission) and approved *Brooks*, 461 So.2d at 995, and *Clem*[5] but without discussion answered the second certified question in the affirmative. That answer to the second question would imply that after revocation of a youthful offender's community control program the youthful offender could be confined for the maximum statutory period for his offense without the limitation of the four year provision of the youthful offender statute[6] which implied holding was, and is, exactly contrary to the holding on this point in the cases being expressly approved as to the first certified question and contrary to the entire line of DCA cases listed above which hold that after violation of supervision the youthful offender could still not be sentenced for a term exceeding four years regardless of the statutory maximum punishment for the particular crime involved.

Two further complicating factors have occurred in the resentencing of youthful offenders. One, although the Fifth District Court of Appeal in *Spurlock v. State*, 449 So.2d 973 (Fla. 5th DCA 1984), *rev. denied*, 466 So.2d 212 (Fla. 1985) referred, with approval, to *Ellis*, which limited resentencing the youthful offender to a four year maximum,[7] nevertheless the Fifth District Court in *Franklin v. State*, 526 So.2d 159 (Fla. 5th DCA 1988), while focusing on other issues, affirmed a youthful offender's sentence of 15 years upon violation of probation.[8] The second complication resulted from the fact that effective July 1, 1985, the legislature amended[9] section 958.14 to specifically provide that even after violation of probation or community control, no youthful offender could be imprisoned for a period longer than six years or for a period longer than the maximum sentence for the offense for which he was found guilty, whichever is less.[10]

Since the supreme court wrote *Brooks*, cases have generally focused on the applicability of the 1985 amendment of section 958.14, to the particular case, generally holding, as in *Buckle v. State*, 528 So.2d 1285 (Fla. 2d DCA 1988), that the amendment is applicable to "all violations of probation occurring after its effective date" and limiting punishment to the six year limitation

in the amendment. Because, in answering the certified question in *Brooks*, the supreme court approved, rather than disapproved the *Clem, Ellis* line of cases, it is unclear whether, pre-1985 amendment law, a youthful offender's sentence after violation of community control, is limited to four years or only by the statutory maximum for the particular offense. It is also unclear whether the amendment, which authorizes a six year limitation, applies to a case, such as this one, where the event upon which the revocation proceedings are based occurred before the amendment but the revocation itself was after the amendment.

If, pre-amendment, the youthful offender statute limited punishment to four years,[11] the 1985 amendment authorizing six years confinement enhances prior authorized punishment and cannot be applied ex post facto to existing cases.[12] On the other hand, if pre-amendment, the reference in section 958.14 to section 948.06(1) authorized punishment up to the statutory maximum without limitation and that statutory maximum exceeds the six years confinement (as it does in this case), then the 1985 amendment restricting punishment to six years confinement constitutes a limitation on previously authorized punishment and the amendment can be constitutionally applied retroactively to the benefit of the youthful offender.[13]

The second question concerning whether the 1985 amendment of section 958.14 applies has recently been answered by the supreme court in *State v. Watts*, 558 So.2d 994 (Fla. 1990). In *Watts*, the court held that the amendment applies to violations of probation which occur after the effective date of the amendment even when the original offenses occurred prior to the effective date. In *Watts*, it was emphasized that "the conduct" which violated community control took place after the amendment. In the instant case, the original offense and the subsequent event violating probation both occurred prior to the effective date of the amendment; however, the community control was not terminated nor the defendant "restrained" until after the effective date of the amendment. The law in effect at the time of the commission of a crime controls the penalty at sentencing. Article X, § 9, Florida Constitution; *Castle v. State*, 330 So.2d 10 (Fla. 1976); *Gourley v. State*, 432 So.2d 755 (Fla. 5th DCA 1983), *appeal dis'm.*, 458 So.2d 272 (Fla. 1984). It is also stated that the law in effect at the time of the violation of community control controls the penalty at sentencing. *See, Buckle v. State*, 528 So.2d 1285 (Fla. 2d DCA 1988). *See also, Lane v. State*, 470 So.2d 30 (Fla. 5th DCA 1985). Therefore, the pre-amendment law regarding "resentencing" of a youthful offender applies to the defendant.

Notwithstanding the answer to the second certified question in *Brooks*, 478 So.2d 1052, the supreme court approved rather than disapproved the line of cases including *Ellis, Clem, (DCA) Brooks, Spurlock and Lane.* For this reason and because in criminal cases ambiguities in the law are to be resolved in favor of the defendant, we hold that, prior to the 1985 amendment to the Youthful Offender Act, upon a violation of probation, a youthful offender was subject to a four year limitation on "resentencing." Therefore, the defendant's sentences of life imprisonment on the burglary conviction and five years incarceration on the false imprisonment conviction were illegal and are vacated.

However, because of the confusion noted above we certify the following question to be one of great public importance:

IN ANSWERING THE SECOND CERTIFIED QUESTION IN *BROOKS V. STATE*, 478 SO.2D 1052 (FLA. 1985), DID THE SUPREME COURT HOLD THAT PRIOR TO THE 1985 AMENDMENT TO THE YOUTHFUL OFFENDER ACT (CHAPTER 958) EVEN THOUGH A YOUTHFUL OFFENDER HAD PREVIOUSLY BEEN ADJUDICATED A YOUTHFUL OFFENDER AND SENTENCED AS SUCH TO A PROBATIONARY SPLIT SENTENCE AND THEREAFTER VIOLATED PROBATION HE MAY BE "RESENTENCED" TO CONFINEMENT FOR THE MAXIMUM STATUTORY PERIOD FOR THE OFFENSE INVOLVED WITHOUT LIMITATION TO THE FOUR YEAR PROVISION OF THE YOUTHFUL OFFENDER ACT (SECTION 958.04(2)(c) and (d), FLORIDA STATUTES), CONTRARY TO THE HOLDINGS IN *BROWN v. STATE*, 492 SO.2D 822 (Fla. 2d DCA 1986); *TIMOTHY CROSBY v. STATE*, 475 SO.2D 1034 (Fla. 1st DCA 1985); *LANE v. STATE*, 470 SO.2D 30 (Fla. 5th DCA 1985); *HART v. STATE*, 463 SO.2D 491 (Fla. 2d DCA 1985); *CLEM v. STATE*, 462 SO.2D 1134 (Fla. 4th DCA 1984); *JAMES CROSBY (II) v. STATE*, 462 SO.2D 607 (Fla. 2d DCA 1985); *ELLIS v. STATE*, 436 SO.2D 342 (Fla. 1st DCA 1983), *rev. denied*, 443 SO.2d 980 (Fla. 1984); *BRANDLE v. STATE*, 406 SO.2D 1221 (Fla. 4th DCA 1981); *GREENE v. STATE*, 398 SO.2D 1011 (Fla. 1st DCA 1981), *appeal dis'm.*, 406 SO.2D 1118 (Fla. 1981).

SENTENCE VACATED; CAUSE REMANDED for further proceedings. (DAUKSCH and HARRIS, JJ., concur.)

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[1]Chapter 85-288 § 24, Laws of Florida.

[2]We reject the State's contention that consideration of this issue is precluded because the issue was not raised in the initial appeal (Arnette v. State, 526 So.2d 1075 (Fla. 5th DCA 1988). It is fundamental error to impose an illegal sentence. Reynolds v. State, 429 So.2d 1331 (Fla. 5th DCA 1983).

[3]Arnette v. State, 526 So.2d 1075 (Fla. 5th DCA 1988).

[4]*See* Poore v. State, 531 So.2d 161 (Fla. 1988).

[5]And inferentially, *Ellis* and the line of cases following *Ellis*.

[6]Courts relying on the supreme court's answer to the second certified question in *Brooks* have held that upon revocation of the youthful offender's community control, the trial court could impose any sanction it could have imposed without reference to the youthful offender provisions of Chapter 958. Johnson v. State, 482 So.2d 398 (Fla. 5th DCA 1985); Hill v. State, 486 So.2d 1372 (Fla. 1st DCA 1986).

[7]This holding was also approved in Lane v. State, 470 So.2d 30 (Fla. 5th DCA 1985).

[8]The supreme court in Franklin v. State, 545 So.2d 851 (Fla. 1989) did not directly address the limitations on "resentencing" a youthful offender after a violation of probation. However, the court in State v. Watts, 15 F.L.W. S140 (Fla. 1990) addressed the issue and held that section 958.14, Florida Statutes, as amended by Ch. 85-288, § 24, Laws of Florida limits the sentence of a youthful offender to no more than six years imprisonment. *See also* the comment on *Franklin*, 526 So.2d at 159, in Hamilton v. State, 553 So.2d 387, 389 (Fla. 4th DCA 1989).

[9]Chapter 85-288 § 24, Laws of Florida.

[10]Query: Was the purpose of the 1985 amendment to enlarge to six years the four year limitation of the *Ellis - Clem* line of cases or to limit to six years the statutory maximum period seemingly approved in the Supreme Court *Brooks* case? Several district courts of appeal have held that, post amendment, the maximum sentence a trial court can impose after revocation of a youthful offender's probation is the six year limitation of section 958.14, Florida Statutes. Hunnicutt v. State, 549 So.2d 1138 (Fla. 3d DCA 1989), *cause dis'm.*, 554 So.2d 1169 (Fla. 1989); Kerklin v. State, 548 So.2d 689 (Fla. 4th DCA 1989), *juris. accepted*, 557 So.2d 867 (Fla. 1990); Dixon v. State, 546 So.2d 1194 (Fla. 3d DCA 1989), *approved*, 558 So.2d 1001 (Fla. 1990); Haynes v. State, 545 So.2d 949 (Fla. 1st DCA 1989); Boffo v. State, 543 So.2d 435 (Fla. 2d DCA 1989); Warren v. State, 542 So.2d 429 (Fla. 3d DCA 1989), *approved*, 559 So.2d 1139 (Fla. 1990); Hall v. State, 536 So.2d 268 (Fla. 3d DCA 1988); Miles v. State, 536 So.2d 262 (Fla. 3d DCA 1988), *approved*, 558 So.2d 1001 (Fla. 1990); Buckle v. State, 528 So.2d 1285 (Fla. 2d DCA 1988); Reams v. State, 528 So.2d 558 (Fla. 1st DCA 1988); Watson v. State, 528 So.2d 101 (Fla. 1st DCA 1988).

[11]As held in *Ellis, Clem, (DCA) Brooks, Spurlock, Lane*, etc.

[12]Article I, § 10, Florida Constitution; Article I, § 10, United States Constitution; Miller v. Florida, 482 U.S. 423, 107 S.Ct. 2448, 96 L.Ed.2d 351 (1987). *See also* Williams v. Dugger, 15 F.L.W. D2079 (Fla. 1st DCA 1990).

[13]*See* Weaver v. Graham, 450 U.S. 24, 101 S.Ct. 960, 67 L.Ed.2d 17 (1981); *Brown*.

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